



October 24, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
Via e-mail: MLRAdjustments@HHS.gov

Re: Florida

Dear Secretary Sebelius,

The fact that most insurance companies do not like the medical loss ratio requirement of the Affordable Care Act does not mean that they are incapable of complying with it. Neither does the fact that some insurance companies will have to accept reduced profits in order to meet the standard.

Creating greater value for consumers' health care premiums was the purpose of the ACA's requirement of 80% to 85% MLR, which clearly intended that insurers become more efficient, with perhaps more modest profits for some.

The statute states that waivers to the MLR standard are intended only for circumstances in which the rule would disrupt the individual insurance market and thus consumers' access to insurance.

Florida's robust market, with 19 listed individual-policy providers doing business and a wide range of choices for individual insurance, should disqualify the state for any waiver--much less the Florida Insurance Department's request that the 80% MLR requirement in the individual market be voided altogether until 2014. This would leave in place Florida's state MLR requirement of 65% for insurers and 70% for HMOs, or a blended rate of 68%.

The state requirement is even weaker than it looks, requiring only that insurers meet the MLR on an average basis for the life of the policy, not on a yearly basis.

Florida's waiver request represents a line that the Department of Health and Human Services should not cross. As a large state with a broad and competitive market in relation to most other states, its application for a blanket waiver is a political, not an economic, act.

- The Insurance Department hearing for which a transcript was provided was a show conducted to bolster the waiver demand and invited only industry testimony.
- Department officials in that hearing asked only questions that amplified the demand.
- The department record shows no consumer organizations or any other critical voices invited into the process and no non-industry comments recorded.
- The factual material ultimately provided by the Florida DOI fails to support the waiver demand.

The granting of any waiver by HHS would, for all intents and purposes, abandon the most significant consumer protection in the ACA. Consumer Watchdog asks that Florida's request be denied altogether.

The factual case:

Withdrawal of Insurers Is Not Shown

- Three letters of insurer intent to withdraw from the Florida market provided by the DOI make no mention of the MLR rule or the ACA as a reason for withdrawal, and one specifically states that the ACA is *not* the reason. The three companies combined covered 733 lives and apparently transferred their subscribers to other insurers. The mystifying fourth letter submitted by the Florida DOI is a redacted letter to a single subscriber from a small Texas company notifying its withdrawal from the health insurance business nationwide.
- The only statement of possible or partial withdrawal from the Florida market because of the MLR requirement (in the record as provided) is a verbal statement by an executive of the holding company of small insurer Freedom Life, during the department's Sept. 24, 2010, hearing. The executive states that the company covers "more than 10,000" lives in Florida. Such a small company would in any case be eligible for an upward MLR adjustment due to the lack of initial statistical credibility. A verbal statement in a hearing aimed at finding fault with the MLR must also be taken with skepticism.

The State's Data Shows Most Insurers Able or Nearly Able To Comply

There is a wide range of estimated 2011 MLR under ACA rules in the DOI's submitted spreadsheet, but the average of 75.7% is quite close to the 80% figure. If federal credibility adjustments are applied as shown in the 2nd HHS response letter, the average reaches 76.6%, close to any margin of statistical error. The Florida market as a whole is certainly not in need of a waiver on the 80% MLR requirement, and any waiver will unjustifiably drive up rates for consumers.

The dominant insurer, Blue Cross and Blue Shield of Florida, with more than 40% of the market based on premium income, expects an MLR of about 80%.

The DOI's failure to identify many of the companies on the list makes any public comment about individual insurers difficult. Those staying anonymous include the 2nd and 4th largest companies in the market, and HHS should look warily on requests by companies that treat their very identities as secret.

One, anonymous company, however, deserves specific comment. Insurer H, the second-largest, in the market, estimates an ACA MLR of 68% in the individual market. Yet its profit margin in the market, 12%, is nearly four times that of BCBS of Florida. There is no reason to cater to a company that can clearly afford to tighten its belt and provide better health care value for its subscribers. The likely assumption is that this company chiefly deals in high-deductible plans, with consumers spending thousands of dollars out of pocket before they are covered. These plans have low value and high profit by design and should not be allowed to evade the base MLR.

Excess Surplus

All but two of the Florida insurers hold more than three times the surplus assets required by law to guarantee solvency. Five hold more than 10 times the required surplus. Most of the state's plans could and should dip into surplus to pay initial rebates, if necessary.

Loss of Broker Services

The Florida DOI argues, without a shred of evidence, that brokers will quit their businesses or leave Florida in large numbers as insurers cut their commissions for the purpose of reaching the MLR requirement of 80%. The DOI argues that consumers will be left wandering, helpless, in a sea of insurance choices. However, both experience and logic argue against this declaration.

- A thorough study this year of the broker issue, by the National Association of Insurance Commissioners, found no evidence that consumers would lack brokers' assistance even if commissions were cut.
- States that already have MLR requirements near or at the ACA levels told the NAIC study group they had heard no complaints—not one—that broker assistance was scarce.
- Brokers stand to gain substantial new clients nationwide from the ACA's consumer insurance mandate, and are likely to make up in quantity whatever they may lose in individual commissions. The policy clarity and simplifications required by the ACA will also make both brokers' and consumers' jobs easier.
- The NAIC study found no definitive evidence that insurers are even cutting broker commissions because of the MLR. Some insurers, notably United Health Group, were moving to flat-rate payments rather than commissions well before passage of the ACA, as a business decision. This has apparently not hurt the insurer's ability to work with brokers.

Consumer Watchdog asks that HHS deny Florida's waiver request in whole. If Florida is granted a waiver, any state would qualify. You will have eliminated the high bar – serious market disruption – against which waivers should be measured.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judy Dugan".

Judy Dugan